



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121128658-3161-02]

RIN 0648-BC72

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is changing the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap as a result of its approval of Framework Adjustment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action also reduces the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. The adjustment will maintain the intended function of the butterfish mortality cap by continuing to limit butterfish discards in the longfin squid fishery while accommodating a potential directed butterfish fishery during the 2013 fishing year.

DATES: Effective [insert date of publication in the FEDERAL REGISTER] through December 31, 2013.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management

Council (Council), including the Framework Document for Framework Adjustment 7, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The Framework Document is also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Richardson, Policy Analyst, 978-675-2152, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule for Framework Adjustment 7 on December 13, 2012 (77 FR 74159). The proposed rule included additional background information and detail on why and how the Council developed Framework Adjustment 7, which NMFS has not repeated in this rule.

NFMS implemented the butterfish mortality cap on the longfin squid fishery as part of Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (75 FR 11441, March 11, 2010) as a means of reducing fishing mortality to the butterfish stock. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality. The cap currently limits butterfish catch (both landings and discards) on directed longfin squid trips. The mortality cap accounts for fishery behavior in which fishermen discard most butterfish caught on a longfin squid trip and land only a small amount of butterfish, which has been the case since 2002. In response to new information that suggests increased butterfish abundance, the Council recommended and NMFS implemented on January 16, 2013, (78 FR 3346) a much higher butterfish quota for the 2013 fishing year. The

increased quota will allow for a directed butterflyfish fishery for the first time in recent years.

NMFS currently calculates the butterflyfish mortality cap by extrapolating the observed butterflyfish catch (landings and discards) on longfin squid trips with an observer aboard to determine the butterflyfish catch on all unobserved longfin squid trips. The butterflyfish mortality cap calculations currently include all trips that land greater than or equal to 2,501 lb of longfin squid.

With directed butterflyfish fishing, an observed trip could land a very large amount of butterflyfish and just enough longfin squid to qualify as a longfin squid trip, and we would include it as a butterflyfish mortality cap trip. This means that the cap estimation would include a number of trips that are not truly targeting longfin squid. In order to accommodate the directed butterflyfish fishery, Framework Adjustment 7 changes the butterflyfish mortality cap on the longfin squid fishery from a catch cap to a discard cap. If the Council specifies a butterflyfish quota that does not accommodate a directed fishery in future fishing years, it can change the butterflyfish discard cap to a catch cap as part of the specifications process.

This action also reduces the butterflyfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterflyfish landings that were previously included in the butterflyfish mortality cap allocation. NMFS has based this reduction on year-end butterflyfish mortality cap analyses for the 2011 fishing year, in which 13 percent of butterflyfish catch in the cap was retained, and 87 percent of butterflyfish catch in the cap was discarded. Although the total butterflyfish mortality allocation will decrease, NMFS expects the adjusted cap level to maintain overall butterflyfish mortality in the longfin squid fishery.

Changes from the Proposed Rule

At the time the proposed rule for Framework 7 published, NMFS had not yet finalized

the butterflyfish mortality cap allocation for 2013. Final Research Set-Aside (RSA) allocations for a given year are typically not available until final specifications, and the exclusion of the final RSA allocation results in slight decreases in a number of the specified allocations for a given species. We have since finalized in the 2013 MSB Specifications and adjusted the butterflyfish mortality allocation from 4,500 mt to 4,477 mt to account for allocated butterflyfish RSA.

The proposed rule included the 13-percent reduction to the mortality cap using the cap specified prior to final RSA allocation. For this final rule, we are adjusting the reduction of the mortality cap to include the RSA allocation. Thus, the final rule for Framework 7 applies the 13-percent discount to the butterflyfish mortality cap allocation presented in the final 2013 MSB Specifications (4,477 mt), which results in a 2013 butterflyfish mortality cap of 3,884 mt.

Comments and Responses

NMFS received one comment on the proposed rule for Framework Adjustment 7. The Garden State Seafood Association (GSSA), a New Jersey-based commercial fishing industry group, commented in support for the action and noted that it was consistent with the intent of Amendment 10 to limit butterflyfish discards and maintain the butterflyfish cap within the longfin fishery, while facilitating the directed butterflyfish fishery in 2013.

Response: NMFS agrees that the measures in Framework 7 will still limit butterflyfish discards in the longfin squid fishery. The measures implemented in the 2013 MSB Specifications facilitate the directed butterflyfish fishery, but this measure does allow additional landings of butterflyfish while on a directed longfin squid trip.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant

Administrator has determined that this final rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner to avoid premature closure of the longfin squid fishery constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The 2013 MSB Specifications allocated a level of butterfish catch that may create enough butterfish market interest to cause a directed butterfish fishery for the first time in many years. This directed fishery is expected to be of the greatest value in late winter. If directed butterfish fishing increases without the measures included in this action, vessels that catch a high volume of butterfish on trips we determine to be longfin squid trips (i.e., those trips that also land more than 2,500 lb of longfin squid), will cause the butterfish mortality cap in the longfin squid fishery to be quickly harvested, resulting in a premature closure of the longfin squid fishery. Because the measures in this action remove landed butterfish from the calculation of the longfin squid butterfish mortality cap, these measures would prevent such an early closure of the longfin squid fishery. A premature closure of the longfin squid fishery would be contrary to the public interest because it would cause unnecessary and unjustifiable economic harm to fishery participants.

Failure to implement this rule immediately will undermine NMFS' ability to accurately manage the butterfish resource by correctly estimating discards. This action has no other impacts on the fishing industry or other members of the public, and thus, the potential for closing the fishery during the normal 30-day delay in effectiveness would be contrary to public interest. Therefore, we are waiving the delay in effectiveness so that the final rule may be effective upon publication. Under MSA and other applicable law requirements, we have proceeded expeditiously with this action and factors out of our control resulted in the delay beyond the

implementation of the 2013 MSB Specifications.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for this certification in the proposed rule and has not repeated it here. NMFS received no comments regarding this certification. As a result, NMFS was not required to prepare a final regulatory flexibility analysis, and none has been prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 27, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.